

# COMMITTEE REPORT

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## MR. PRESIDENT:

The Senate Committee on Commerce and Consumer Affairs, to which was referred House Bill No. 1791, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning trade
- 3 regulations.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 24-3-5 IS ADDED TO THE INDIANA CODE AS
- 6 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2003]:
- 8 **Chapter 5. Delivery Sales of Tobacco Products**
- 9 **Sec. 1. As used in this chapter, "delivery sale" means a**
- 10 **transaction for the purchase of tobacco products in which an offer**
- 11 **to purchase tobacco products is made electronically using a**
- 12 **computer network (as defined in IC 35-43-2-3) or by mail and**
- 13 **acceptance of the offer results in delivery of the tobacco products**
- 14 **to a named individual at a designated address.**
- 15 **Sec. 2. As used in this chapter, "merchant" means a person or**
- 16 **an entity that engages in the selling of tobacco products by delivery**
- 17 **sale.**
- 18 **Sec. 3. As used in this chapter, "tobacco product" has the**
- 19 **meaning set forth in IC 7.1-6-1-3.**
- 20 **Sec. 4. A merchant may not mail or ship tobacco products as**
- 21 **part of a delivery sale unless, before mailing or shipping the**

- 1 tobacco products, the merchant:
- 2 (1) obtains from the prospective customer a written statement
- 3 signed by the prospective customer under penalty of perjury:
- 4 (A) providing the prospective customer's address and date
- 5 of birth;
- 6 (B) advising the prospective customer that:
- 7 (i) signing another person's name to the statement
- 8 required under this subdivision may subject the person
- 9 to a civil monetary penalty of not more than one
- 10 thousand dollars (\$1,000); and
- 11 (ii) purchasing tobacco products by a person less than
- 12 eighteen (18) years of age is a Class C infraction under
- 13 IC 35-46-1-10.5;
- 14 (C) confirming that the tobacco product order was placed
- 15 by the prospective customer;
- 16 (D) providing a warning under 15 U.S.C. 1333(a)(1); and
- 17 (E) stating the sale of tobacco products by delivery sale is
- 18 a taxable event for purposes of IC 6-7-1 and IC 6-7-2;
- 19 (2) makes a good faith effort to verify the information in the
- 20 written statement obtained under subdivision (1) by using a
- 21 federal or commercially available data base; and
- 22 (3) receives payment for the delivery sale by a credit or debit
- 23 card issued in the name of the prospective purchaser.

24 **Sec. 5. (a) A merchant who mails or ships tobacco products as**

25 **part of a delivery sale shall:**

- 26 (1) use a mailing or shipping service that requires the
- 27 customer or a person at least eighteen (18) years of age who
- 28 is designated by the customer to:
- 29 (A) sign to accept delivery of the tobacco products; and
- 30 (B) present a valid operator's license issued under
- 31 IC 9-24-3 or identification card issued under IC 9-24-16 if
- 32 the customer or the customer's designee, in the opinion of
- 33 the delivery agent or employee of the mailing or shipping
- 34 service, appears to be less than twenty-seven (27) years of
- 35 age;
- 36 (2) provide to the mailing or shipping service used under
- 37 subdivision (1) proof of compliance with section 6(a) of this
- 38 chapter; and
- 39 (3) include the following statement in bold type or capital
- 40 letters on an invoice or shipping document:
- 41 **INDIANA LAW PROHIBITS THE MAILING OR**
- 42 **SHIPPING OF TOBACCO PRODUCTS TO A PERSON**

**LESS THAN EIGHTEEN (18) YEARS OF AGE AND  
REQUIRES PAYMENT OF ALL APPLICABLE TAXES.**

**(b) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:**

**(1) delivers tobacco products as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or**

**(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).**

**The alcohol and tobacco commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.**

**(c) The following apply to a merchant that mails or ships tobacco products as part of a delivery sale without using a third party service as required by subsection (a)(1):**

**(1) The merchant shall require the customer or a person at least eighteen (18) years of age who is designated by the customer to:**

**(A) sign to accept delivery of the tobacco products; and**

**(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.**

**(2) The alcohol and tobacco commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if the merchant:**

**(A) delivers the tobacco products without first complying with section 6(a) of this chapter; or**

**(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).**

**The alcohol and tobacco commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.**

**Sec. 6. (a) A merchant shall, before mailing or shipping tobacco products as part of a delivery sale, provide the department of state revenue with a written statement containing the merchant's name, address, principal place of business, and each place of business in Indiana.**

(b) A merchant who mails or ships tobacco products as part of a delivery sale shall, not later than the tenth day of the calendar month immediately following the month in which the delivery sale occurred, file with the department of state revenue a copy of the invoice for each delivery sale to a customer in Indiana. The invoice must include the following information:

(1) The name and address of the customer to whom the tobacco products were delivered.

(2) The brand name of the tobacco products that were delivered to the customer.

(3) The quantity of tobacco products that were delivered to the customer.

(c) A merchant who complies with 15 U.S.C. 376 is considered to satisfy the requirements of this section.

Sec. 7. (a) A merchant who delivers tobacco products to a customer as part of a delivery sale shall:

(1) collect and pay all applicable taxes under IC 6-7-1; or

(2) place a legible and conspicuous notice on the outside of the container in which the tobacco products are shipped. The notice shall be placed on the same side of the container as the address to which the container is shipped and must state the following:

"If these tobacco products have been shipped to you from a merchant located outside the state in which you reside, the merchant has under federal law reported information about the sale of these tobacco products, including your name and address, to your state tax collection agency. You are legally responsible for all applicable unpaid state taxes on these tobacco products."

(b) For a violation of this section the alcohol and tobacco commission may impose, in addition to any other remedies, civil penalties as follows:

(1) If the person has one (1) judgment for a violation of this section committed during a five (5) year period, a civil penalty of at least one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000).

(2) If the person has two (2) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500).

(3) If the person has three (3) unrelated judgments for

violations of this section committed during a five (5) year period, a civil penalty of at least four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000).

(4) If the person has four (4) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500).

(5) If the person has at least five (5) unrelated judgments for violations of this section committed during a five (5) year period, a civil penalty of ten thousand dollars (\$10,000).

**Sec. 8. The alcohol and tobacco commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:**

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells tobacco products by delivery sale to a person less than eighteen (18) years of age.

**The alcohol and tobacco commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.**

SECTION 2. IC 34-24-1-1, AS AMENDED BY P.L.123-2002, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

- 1 (viii) Dealing in marijuana, hash oil, or hashish
- 2 (IC 35-48-4-10).
- 3 (B) Any stolen (IC 35-43-4-2) or converted property
- 4 (IC 35-43-4-3) if the retail or repurchase value of that property
- 5 is one hundred dollars (\$100) or more.
- 6 (C) Any hazardous waste in violation of IC 13-30-6-6.
- 7 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
- 8 destruction (as defined in IC 35-41-1-29.4) used to commit,
- 9 used in an attempt to commit, or used in a conspiracy to
- 10 commit an offense under IC 35-47 as part of or in furtherance
- 11 of an act of terrorism (as defined by IC 35-41-1-26.5).
- 12 (2) All money, negotiable instruments, securities, weapons,
- 13 communications devices, or any property used to commit, used in
- 14 an attempt to commit, or used in a conspiracy to commit an
- 15 offense under IC 35-47 as part of or in furtherance of an act of
- 16 terrorism or commonly used as consideration for a violation of
- 17 IC 35-48-4 (other than items subject to forfeiture under
- 18 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
- 19 (A) furnished or intended to be furnished by any person in
- 20 exchange for an act that is in violation of a criminal statute;
- 21 (B) used to facilitate any violation of a criminal statute; or
- 22 (C) traceable as proceeds of the violation of a criminal statute.
- 23 (3) Any portion of real or personal property purchased with
- 24 money that is traceable as a proceed of a violation of a criminal
- 25 statute.
- 26 (4) A vehicle that is used by a person to:
- 27 (A) commit, attempt to commit, or conspire to commit;
- 28 (B) facilitate the commission of; or
- 29 (C) escape from the commission of;
- 30 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
- 31 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
- 32 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
- 33 under IC 35-47 as part of or in furtherance of an act of terrorism.
- 34 (5) Real property owned by a person who uses it to commit any of
- 35 the following as a Class A felony, a Class B felony, or a Class C
- 36 felony:
- 37 (A) Dealing in or manufacturing cocaine, a narcotic drug, or
- 38 methamphetamine (IC 35-48-4-1).
- 39 (B) Dealing in a schedule I, II, or III controlled substance
- 40 (IC 35-48-4-2).
- 41 (C) Dealing in a schedule IV controlled substance
- 42 (IC 35-48-4-3).

- 1 (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).  
 2 (6) Equipment and recordings used by a person to commit fraud  
 3 under IC 35-43-5-4(11).  
 4 (7) Recordings sold, rented, transported, or possessed by a person  
 5 in violation of IC 24-4-10.  
 6 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as  
 7 defined by IC 35-45-6-1) that is the object of a corrupt business  
 8 influence violation (IC 35-45-6-2).  
 9 (9) Unlawful telecommunications devices (as defined in  
 10 IC 35-45-13-6) and plans, instructions, or publications used to  
 11 commit an offense under IC 35-45-13.  
 12 (10) Any equipment used or intended for use in preparing,  
 13 photographing, recording, videotaping, digitizing, printing,  
 14 copying, or disseminating matter in violation of IC 35-42-4-4.  
 15 (11) Destructive devices used, possessed, transported, or sold in  
 16 violation of IC 35-47.5.  
 17 **(12) Tobacco and tobacco products that are sold in violation**  
 18 **of IC 24-3-5, tobacco and tobacco products that a person**  
 19 **attempts to sell in violation of IC 24-3-5, and other personal**  
 20 **property owned and used by a person to facilitate a violation**  
 21 **of IC 24-3-5.**  
 22 (b) A vehicle used by any person as a common or contract carrier in  
 23 the transaction of business as a common or contract carrier is not  
 24 subject to seizure under this section, unless it can be proven by a  
 25 preponderance of the evidence that the owner of the vehicle knowingly  
 26 permitted the vehicle to be used to engage in conduct that subjects it to  
 27 seizure under subsection (a).  
 28 (c) Equipment under subsection (a)(10) may not be seized unless it  
 29 can be proven by a preponderance of the evidence that the owner of the  
 30 equipment knowingly permitted the equipment to be used to engage in  
 31 conduct that subjects it to seizure under subsection (a)(10).  
 32 (d) Money, negotiable instruments, securities, weapons,  
 33 communications devices, or any property commonly used as  
 34 consideration for a violation of IC 35-48-4 found near or on a person  
 35 who is committing, attempting to commit, or conspiring to commit any  
 36 of the following offenses shall be admitted into evidence in an action  
 37 under this chapter as prima facie evidence that the money, negotiable  
 38 instrument, security, or other thing of value is property that has been  
 39 used or was to have been used to facilitate the violation of a criminal  
 40 statute or is the proceeds of the violation of a criminal statute:  
 41 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic  
 42 drug, or methamphetamine).

- 1 (2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled  
2 substance).  
3 (3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).  
4 (4) IC 35-48-4-4 (dealing in a schedule V controlled substance)  
5 as a Class B felony.  
6 (5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or  
7 methamphetamine) as a Class A felony, Class B felony, or Class  
8 C felony.  
9 (6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as  
10 a Class C felony.

(Reference is to HB 1791 as printed February 28, 2003.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 8, Nays 0.

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**Senator Server, Chairperson**